



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0204; FRL-9440-02-R3]

Air Plan Approval; Delaware; Sulfur Content of Fuel Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware. The revision pertains to the reduction of the maximum allowable sulfur content limit for distillate fuels, from a current limit of 3000 parts per million (ppm) (0.3% by weight) to 15 ppm (0.0015% by weight) and residential fuels from a current limit of 1.0% by weight to 0.5% by weight. This revision also adds requirements for sampling and testing along with certification and recordkeeping. Additionally, start up, shut down and malfunction provisions that were previously included in the Delaware SIP have been removed in this revision. EPA has determined that such removal corrects a deficiency identified in the June 12, 2015, SIP call issued to Delaware. EPA is approving the revision to the Delaware SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0204. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person

identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mallory Moser, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2030. Ms. Moser can also be reached via electronic mail at moser.mallory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 2022 (87 FR 4528), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware which proposed to approve a revision to Title 7 of Delaware's Administrative Code (7 DE Admin. Code) 1108 – Sulfur Dioxide Emissions from Fuel Burning Equipment into the Delaware SIP. The revision will reduce the amount of sulfur in fuel oils used in fuel burning units.¹ The revised regulation also establishes the date of compliance and adds necessary record keeping and recording provisions to ensure compliance with the regulation. Additionally, the revision removes start up, shut down and malfunction provisions that were previously included in the Delaware SIP. The formal SIP revision was submitted by Delaware on July 10, 2013, and amended on August 19, 2016, by a supplemental letter from Delaware Department of Natural Resources and Environmental Control (DNREC) withdrawing a portion of Section 3.0 of 7 DE Admin. Code 1108. The letter is available in the docket for this rulemaking and online at www.regulations.gov.

II. Summary of SIP Revision and EPA Analysis

The SIP revision incorporates amendments to 7 DE Admin. Code 1108 – Sulfur Dioxide Emissions from Fuel Burning Equipment which sets the allowable content of sulfur in fuel oils combusted in Delaware. The amendments reduce the SIP approved maximum allowable sulfur

¹ A “fuel burning unit” is defined as “each unit, or any combination of units discharging to a common stack used for the burning of fuel or other combustible material for the primary purpose of utilizing the thermal energy released.” This definition is included in the Delaware SIP at 40 CFR 52.420(c).

content limit for distillate fuels to 15 ppm, and for residential fuel to 0.5% by weight. For any other fuel, the sulfur content would remain 1.0% by weight.

In addition, the amendments to 7 DE Admin. Code 1108 respond to a SIP call issued by EPA for this provision as part of a national action to address startup, shutdown and malfunction (SSM) SIP provisions which are contrary to the CAA and existing EPA guidance.² The SIP submission from Delaware, that is the subject of this action, contains a revised version of 7 DE Admin. Code 1108 to delete the language identified in the 2015 SSM SIP call, formerly at Section 1.2, which allowed for impermissible exemptions from the low sulfur fuel oil provisions.

This SIP revision to implement low sulfur fuel oil provisions is expected to reduce regional haze and visibility impairment in Delaware. Additionally, decreased emissions of sulfur dioxide (SO₂) will contribute to the attainment, maintenance, or both, of the SO₂ and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) in Delaware and the surrounding areas. Other specific requirements of the SIP revision and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. Relevant support documents for this action are available online at <https://www.regulations.gov>, Docket number EPA-R03-OAR-2014-0204.

III. EPA's Response to Comments Received

EPA received four comments in total, two of which were supportive and can be found in the docket. The remaining two comments EPA received were generally supportive but raised issues beyond the scope of this rulemaking. One comment supported this action generally but suggested additional sulfur reductions should be encouraged by phasing out fossil fuels and investing "in infrastructure that supports the use of electric cars." Another comment approved of

² After issuing a statement in 2020 to change aspects of the policy articulated in the 2015 SSM SIP Action, EPA in 2021 reinstated and reaffirmed the 2015 policy (*see* September 30, 2021, memorandum "Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy," from Janet McCabe, Deputy Administrator). Neither the 2020 nor 2021 guidance memoranda affected the SSM SIP call for Delaware, and, as stated in the McCabe memorandum, EPA intends to implement the 2015 SSM SIP Action, including taking this action on the SIP submittal in partial response to the 2015 SIP call.

this action to the extent that it approved Delaware's revision to correct one of the SSM exemptions identified in the SSM SIP Call, but admonished EPA for not yet taking action to address the other six SSM provisions in Delaware's SIP that were identified in the SSM SIP Call. EPA acknowledges both comments and the feedback provided. However, the concerns expressed by both commenters are beyond the scope of this rulemaking action, and no response by EPA to those comments is required.

IV. Final Action

EPA is approving, as a SIP revision, the State of Delaware's July 10, 2013, submittal reducing the amount of sulfur in fuel oils and removing SSM provisions from this portion of the Delaware SIP. EPA has determined that such approval corrects a deficiency identified in the June 12, 2015, SIP call issued to Delaware. EPA is approving the revision to the Delaware SIP in accordance with the requirements of the CAA.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Delaware's Sulfur Dioxide Emissions from Fuel Burning Equipment requirements as described in 7 DE Admin. Code 1108, not including the last sentence of section 3.0, which Delaware withdrew from this SIP revision. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³

³ 62 FR 27968 (May 22, 1997).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed and shall not postpone the effectiveness of such rule or action.

This action regarding fuel oil sulfur limits for combustion and sale in the State of Delaware may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Regional Haze, Sulfur oxides.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In § 52.420:

a. In the table in paragraph (c) under the heading “1108 Sulfur Dioxide Emissions from Fuel Burning Equipment”:

i. Revise the entries “Section 1.0”, “Section 2.0”, and “Section 3.0”; and

ii. Add the entries “Section 4.0” and “Section 5.0” in numerical order.

The revisions and additions read as follows:

§ 52.420 Identification of plan.

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(c) * * *

EPA-Approved Regulations and Statutes in the Delaware SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *				
1108 Sulfur Dioxide Emissions from Fuel Burning Equipment				
Section 1.0	General Provisions	07/11/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Section 2.0	Limit on Sulfur Content of Fuel	07/11/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Section 3.0	Emissions Control in Lieu of Sulfur Content Limits of 2.0 of this	07/11/2013	[insert date of publication in the Federal Register], [insert Federal	

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
	Regulation		Register citation]	
Section 4.0	Sampling and Testing Methods and Requirements	07/11/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Section 5.0	Recordkeeping and Reporting	07/11/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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